

This letter answers questions regarding the application of the Mobile Telecommunications Sourcing Conformity Act to the Telecommunications Excise Tax Act and the Simplified Municipal Telecommunications Tax Act. See 35 ILCS 638/1 et seq. (This is a GIL).

December 4, 2002

Dear Xxxxx:

This letter is in response to your letter dated June 26, 2002. We apologize for the lengthy delay in responding to your inquiry. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

Our company, which specializes in tax compliance software, is in the process of updating our database to accommodate any changes in tax law that have occurred as a result of enactment of the Mobile Telecommunications Sourcing Act on both the state and federal level. Specifically, we are investigating the issue of whether states are changing their respective definitions of intrastate and/or interstate telecommunications service in light of the MTSA. In the state of Illinois, a variety of taxes on both the state and local level are potentially affected by these legislative changes. Accordingly, we are seeking a General Information Letter that will help us resolve any residual uncertainty. First, we will pose our questions regarding state level taxes, and then proceed to compare those responses to telecommunication taxes on the local level.

## **Section I - State Telecommunications Excise Tax**

### **Overview:**

According to Section 35 ILCS 630/3, 'a tax is imposed upon the act or privilege of **originating or receiving intrastate** telecommunications by a person in this State at the rate of 7% of the *gross charge* for such telecommunications purchased at retail.' Section 35 ILCS 630/4 extends this same taxability to interstate telecommunications. The term 'gross charge' is defined as 'the *amount paid* for the act or privilege of originating or receiving telecommunications in this State and for all services provided in connection therewith.' [35 ILCS 630/2(a)] In turn, the term 'amount paid' is defined as 'the amount charged to the taxpayer's *service address* in this State regardless of where such amount is billed or paid.' [35 ILCS 630/2(b)]

A General Information Letter issued by your department on October 26, 2001 reached the following conclusion about the taxability of *roaming charges* separately billed by a cellular telecommunications provider to an out-of-state customer:

'We do not agree that the telecommunications described in example 4 are subject to Telecommunications Excise Tax. Although the call is intrastate within Illinois, the *service address* is **out-of-State**. Under the statutory definition of *amount paid*, charges to service addresses outside Illinois are not subject to the tax.' [ST 01-0227-GIL]

In the year 2001, the state of Illinois enacted 'the Mobile Telecommunications Sourcing Conformity Act' (House Bill 843). According to that legislation, the state of Illinois has adopted the key provision of the federal MTSA relating to '**sourcing rules** for mobile telecommunications services.' Specifically, Section 20(b) of the Act provides:

'All charges for *mobile telecommunications services* that are deemed to be provided by the customer's home service provider ... are authorized to be subjected to tax, ... by the *taxing jurisdictions* whose territorial limits encompass the customer's *place of primary use* regardless of where the mobile telecommunication services **originate, terminate, or pass through** etc.'

In addition, the definitions section of the Telecommunications Excise Tax Act is amended to provide that 'In the event a *service address* is not a defined location, as in the case of **mobile phones** [or] **paging systems**, **service address** means the customer's *place of primary use* as defined in the Mobile Telecommunications Sourcing Conformity Act. (See Section 905 of House Bill 843) An almost identical change in the definition of the term 'service address' has been made for purposes of the Telecommunications Municipal Infrastructure Maintenance Fee Act, merely substituting the term **wireless telecommunications** for the term **mobile phones** (See Section 910 of House Bill 843)

Based upon these provisions, we pose the following questions to your agency:

**Questions:**

IA - As a result of your state's codification of the MTSA, is your state opting to change its definition of intrastate mobile communication services?

IB - Namely, whereas in the past, the taxability of intrastate mobile telecommunications services was limited to calls that both originated and terminated in Illinois etc., are you now *expanding* that scope of liability to include wireless calls that both originate and terminate in *any* state in the U.S.? (provided the customer's *place of primary use* is located in Illinois)

IC - If not, how do you reconcile the existing definition of 'intrastate communications' with the sourcing rules above which imply that charges for mobile telecommunications would now be deemed taxable *regardless* of their place of origination or termination so long as the customer's place of primary use is located in the state of Illinois?

ID - Likewise is your Department now revising its concept of interstate mobile communication services to now include wireless calls that originate and terminate in *any two states* of the country, even if neither of those states is the state of Illinois? (provided the customer's *place of primary use* is located in Illinois)

### **Hypothetical Fact Patterns:**

Please respond to the following hypothetical scenarios by revealing whether each of them result in taxable or non-taxable outcomes. (Assume that in each case the transaction is post-MTSA and that the customer's place of primary use *is* located in Illinois):

#### **Example 1:**

A customer places a wireless call that both originates and terminates in Illinois.

#### **Example 2:**

A customer places a wireless call that both originates and terminates in Missouri.

#### **Example 3:**

A customer places a wireless call that originates in Illinois and terminates in Missouri.

#### **Example 4:**

A customer places a wireless call that originates in Missouri and terminates in Iowa.

## **Section II - Local Telecommunications Taxes**

### **Overview:**

In addition to the major telecommunications taxes Illinois imposes on the state level, we are also investigating whether any taxability outcomes are going to change on the local level as a result of your state's codification of the MTSA. In particular, the taxes we are researching are: (1) the Municipal Telecommunications Tax, (2) the Municipal Infrastructure Maintenance Fee (IMF) and (3) the Municipal Utility Tax. According to the governing statutes, it is our understanding that currently, the Municipal Telecom Tax as well as the Municipal IMF apply to charges for either intrastate **or** interstate calls that either originate or terminate within the taxing municipality. In contrast, the governing statute (65 ILCS 5/8-11-2) requires that in the case of the Municipal Utility Tax (which we have been informed is limited to intrastate telecommunications), the individual call must originate within the taxing city. Based on these provisions, we pose the following additional questions:

### **Questions:**

IIA - As a result of your state's codification of the MTSA, are municipalities which impose any of the three local taxes identified above obliged to conform their taxability rules concerning the definition of intrastate or interstate mobile telecommunication services to the same rules set forth in your responses to Question IA-ID given above?

IIB - Specifically, are these cities required to *expand* their definitions to include calls that originate and terminate in *any* state of the country (for purposes of intrastate wireless calls) as well as calls that originate and terminate in *any* two states of the country (for purposes of interstate wireless calls)? (provided that the customer's *place of primary use* is located within the taxing municipality)

IIC - If not, how do you reconcile that determination with the provision contained in Section 15(a) of House Bill 843 which declares that 'This Act shall apply to *any* tax, charge, or fee levied by the State or a taxing jurisdiction within this State as a fixed charge for each customer or measured by *gross amounts* charged to customers for mobile telecommunications services etc.'?

IID - Finally, are any of the determinations given to Questions IIA-IIC given above going to change once the **Simplified Municipal Telecommunications Tax Act** goes into effect? If so, what is the exact nature of the changes that are about to occur?

Please respond to the above set of questions with a written response, quoting any official sources or offering any explanations that may be needed. If you prefer, this letter may be faxed to our office.

Thank you in advance for your timely response to our inquiry letter.

## **DEPARTMENT'S RESPONSE:**

In reference to your questions in Section I of your letter, we know of no legislation that has been proposed to change the definition of either interstate or intrastate telecommunications (mobile or otherwise) in the Telecommunications Excise Tax Act.

The Telecommunications Excise Tax Act imposes a tax on the act or privilege of originating in this State or receiving in this State intrastate and interstate telecommunications by a person in this State at the rate of 7% of the gross charge for such telecommunications purchased at retail from a retailer by such person. 35 ILCS 630/3 & 630/4. Under the Mobile Telecommunications Sourcing Conformity Act, only those charges that are billed to the customer's "place of primary use" in Illinois by the customer's home service provider may be subject to tax in Illinois. 35 ILCS 638/20.

In regards to the example you have listed:

Example 1: Since the mobile telecommunication both originates and terminates in this State and the customer's place of primary use is in this State, the gross charges for that telecommunication would be subject to Telecommunications Excise Tax liability.

Example 2: Subsection (b) of Section 495.120 of the Department's administrative rules regarding the Telecommunications Excise Tax Act and mobile telecommunications states:

"The Department will not require retailers to attempt to apportion traffic or gross charges based upon the physical location of a mobile portable telecommunications device at the time service is provided. For example, a retailer providing service to a cellular phone customer shall charge Telecommunications Excise Tax on all traffic billed to an Illinois address unless there is evidence in the books and records of the retailer that a call was originated from a location outside this State and terminated outside this State."<sup>1</sup>

If the customer's place of primary use is in this State, the Department will consider a mobile telecommunication billed to that customer's place of primary use to have originated or terminated in this State unless the retailer's books and records reflect that such mobile telecommunication originated from a location outside this State and terminated at a location outside this State. If the retailer's books and records reflect that such a mobile telecommunication originated from a location outside this State and terminated at a location outside this State, then the charges for that telecommunication are not subject to Telecommunications Excise Tax.

Example 3: The charges for a mobile telecommunication that originates in Illinois is subject to Telecommunications Excise Tax liability if the customer's place of primary use is in Illinois.

Example 4: See the answer to Example number 2 above.

In reference to Section II of your letter regarding local telecommunications taxes, the Department does not currently administer local telecommunications taxes and we have no authority to provide interpretations of those taxes. However, the Department will begin collecting the Simplified Municipal Telecommunications Tax beginning with bills issued on and after January 1, 2003. The Simplified Municipal Telecommunications Tax is imposed in the same manner and on the same tax base as the State's Telecommunications Excise Tax. Both taxes apply to interstate and intrastate telecommunications. Therefore, our responses concerning the application of the Mobile Telecommunications Sourcing Conformity Act to the State's Telecommunications Excise Tax Act will also apply in regards to the Simplified Municipal Telecommunications Tax Act (see our responses listed above regarding the questions in Section I of your letter).

I hope this information is helpful, and again, we apologize for the delay in responding to your inquiry. The Department of Revenue maintains a website, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Terry D. Charlton  
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TDC:msk

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<sup>1</sup> The Department intends to amend its Telecommunications Excise Tax rules in the near future to include the pertinent provisions of the Mobile Telecommunications Sourcing Conformity Act.